DATO' HJ MUSTAFA KAMAL MAULUT A

v.

ANGKATAN KOPERASI KEBANGSAAN MALAYSIA BHD (ANGKASA)

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HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[ORIGINATING SUMMONS NO: R1-24-99-2010]
11 MARCH 2011

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UNINCORPORATED ASSOCIATIONS: *Societies - Co-Operative Society - Plaintiff disbarred from attending annual general meeting - Whether decision to do so invalid - Whether defendant has jurisdiction over plaintiff - Whether plaintiff a member of defendant - Term "ahli" and "anggota" - Whether distinguishes nature of membership in defendant's organization - Whether plaintiff subject to defendant's by-laws - Whether dispute between plaintiff and defendant should be referred to the Malaysia Co-Operative Societies Commission - Whether application by plaintiff premature and not in accordance to law - Co-Operative Societies Act 1993, s. 82*

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CIVIL PROCEDURE: *Declaration - Application for - Defendant's decision to disbar plaintiff from attending annual meeting - Whether decision invalid - Whether defendant has jurisdiction over plaintiff - Whether plaintiff a member of the defendant - Whether the term "ahli" and "anggota" distinguishes nature of membership in defendant's organization - Whether plaintiff subject to defendant's by-laws - Whether dispute between plaintiff and defendant should be referred to the Malaysia Co-Operative Societies Commission - Whether application by plaintiff premature and not in accordance to law - Co-Operative Societies Act 1993, s. 82*

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The plaintiff was the chairman of a co-operative known as 'Koperasi UKHWAH' ("UKHWAH") which was a member of the defendant. The plaintiff was also a vice president and member of the defendant's board of directors known as "Jawatankuasa Tinggi". The defendant alleged *vide* their show cause letter dated 23 February 2010 that whilst the plaintiff was vice president of the defendant, the plaintiff had been involved in acts detrimental to the defendant. The defendant had further requested the plaintiff to attend an internal departmental inquiry *vide* their letter dated 24 June 2010 which the plaintiff did not attend. The plaintiff claimed that the said inquiry was invalid and the

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A defendant's act was *mala fide*. *Vide* letter dated 26 August 2010, the defendant had notified the plaintiff that he was disbarred from attending any annual meeting at the national level or state level or any meeting of the defendant. Dissatisfied with the punishment imposed by the defendant, the plaintiff by way of this application B applied for a declaration that the said punishment was invalid wherein the defendant had no jurisdiction over the plaintiff since the plaintiff was never a member of the defendant nor were the defendant's by-laws applicable against the plaintiff. The defendant objected to this application for being premature and not in C accordance to law as the plaintiff was a member of the defendant and his dispute with the defendant ought to be referred to the Malaysia Co-Operative Societies Commission (Commission) pursuant to s. 82 of the Co-Operative Societies Act 1993 (the Act).

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Held (dismissing plaintiff's application with costs):

(1) The plaintiff, being a member of the defendant's board of directors, was an officer of the defendant at the material time. "Ahli" referred to co-operative societies who were members of E the defendant and "anggota" referred to individuals who were members of co-operatives, which were in turn the defendant's "ahli". Members of the defendant's "ahli", by virtue of their membership in the "ahli", were also the defendant's "anggota". The usage of the words "ahli" and "anggota" in the F defendant's by-laws served to distinguish the nature of membership in the defendant's organization but that did not detract from the fact that both a co-operative which was an "ahli" and an individual who was an "anggota" were members of the defendant. The plaintiff, as "anggota"/member of the G defendant, was therefore subject to the defendant's by-laws and the defendant had jurisdiction to act against the plaintiff for any alleged misconduct. (paras 13, 16 & 17)

(2) The dispute between the plaintiff and the defendant came H within the ambit of s. 82 of the Act and thus the said dispute had to be referred to the Commission for a decision. It was clear that the legislature deemed it fit that disputes in the nature specified in s. 82 of the Act between the categories of persons or co-operatives specified therein must be referred to I the Commission for decision. (paras 19 & 20)

(3) Declaratory remedy was discretionary in nature and a declaratory order may be refused if it appeared that it was premature to be granted. It was premature for the plaintiff to bring his dispute to the court for resolution without first complying with the requirements of s. 82 of the Act. (para 21)

Case(s) referred to:
Manggai v. Government of Sarawak & Anor [1970] 1 LNS 80 FC ***(refd)***

Legislation referred to:
Co-Operative Societies Act 1993, ss. 2, 4, 15, 17, 82(1)

For the plaintiff - M Moghan; M/s Moghan & Co
For the defendant - Dato' Abdul Shukor Ahmad (Shafiza Diana Baharuddin with him); M/s Shukor Baljit & Partners

Reported by Kumitha Abdul Majid

JUDGMENT

Aziah Ali J:

[1] The plaintiff is the chairman of a co-operative known as 'Koperasi UKHWAH' ("UKHWAH") which is a member of the defendant, ANGKASA. The defendant is a registered co-operative under the Co-Operative Societies Act 1993 ("the Act"). The plaintiff was a Vice President and member of the defendant's Board of Directors known as 'Jawatankuasa Tinggi'.

[2] On 23 February 2010 the defendant sent a show cause letter to the plaintiff (exh. MKM1) containing allegations that, whilst the plaintiff was Vice President of the defendant, between March 2009 till December 2009, the plaintiff was allegedly involved in acts detrimental to the defendant (exh. MKM1). The letter reads as follows:

> Surat Tunjuk Sebab
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> Dimaklumkan bahawa Tuan didakwa telah melakukan dan/atau mengarah supaya dilakukan perbuatan-perbuatan yang bertentangan dengan etika dan disiplin ANGKASA dengan niat untuk menang pertandingan merebut jawatan sebagai Yang Dipertua (YDP) ANGKASA pada Persidangan Kebangsaan Tahunan ANGKASA (PKTA) ke-26, 19 Disember 2009 di Pusat Dagangan Dunia Putra (PWTC), Kuala Lumpur.

Tuan, semasa memegang jawatan sebagai Naib Yang Dipertua ANGKASA, didakwa telah:

1. Menyogok Ahli Jawatankuasa Perhubungan ANGKASA Negeri tertentu dengan membawa dan membiayai lawatan mereka ke Acheh, Indonesia pada 13 Mac 2009 hingga 16 Mac 2009 dan 25 September 2009 hingga 27 September 2009 dengan niat mempengaruhi mereka supaya mengundi Tuan sebagai YDP pada PKTA Ke-26.

2. Mengatur/mempengaruhi secara berkomplot perlantikan Pengerusi dan Ahli Jawatankuasa Perhubungan ANGKASA Negeri tertentu dengan cara menyogok mereka dengan lawatan ke luar Negara dan jamuan makan.

3. Mengarahkan ejen-ejen atau wakil-wakil Tuan mengumpulkan kad undi dari perwakilan pada PKTA Ke-26, 19 Disember 2009, dengan tujuan untuk memastikan undi PKTA memihak kepada Tuan.

4. Melalui ejen-ejen atau wakil Tuan telah mengambil dan membayar bagi pihak ANGKASA kupon-kupon wang saku wakil tersebut dengan harga lebih tinggi dari sepatutnya iaitu RM160.00 sebagai balasan kepada perwakilan kerana menyerahkan kad undi mereka.

5. Menyebabkan penerbitan gambar kulit dan isi kandungan di dalam Majalah I Bil. 86 edisi Disember 2009. Gambar kulit asal telah ditukar dengan gambar Tuan, manakala artikel asal dari muka surat 19 hingga 26 ditukar dengan artikel Tuan. Majalah tersebut telah diedarkan oleh Tuan dan/atau melalui ejen-ejen atau wakil-wakil Tuan semasa PKTA Ke-26, 19 Disember 2009 di PWTC, Kuala Lumpur dengan tujuan menonjolkan diri Tuan. Butir-butir yang Tuan huraikan dalam rencana yang kononnya disiarkan oleh Majalah tersebut juga tidak benar dan betul kerana perkara-perkara tersebut telahpun diputuskan oleh Jawatankuasa ANGKASA.

6. Menggunakan dan memakai Darjah Kebesaran "Dato" semasa berkempen pada PKTA Ke-26 dengan tujuan meraih sokongan perwakilan kepada Tuan, yang memberi gambaran seolah-olah Darjah Kebesaran tersebut telah dianugerahkan secara sah oleh Raja-Raja Melayu dan/atau Yang Dipertuan Besar dan/atau Yang Dipertua Negeri di negeri-negeri di Malaysia atau dianugerahkan oleh Yang DiPertuan Agung, sedangkan Tuan tidak pernah dianugerahkan Darjah Kebesaran sedemikian. Hakikatnya anugerah yang kononnya diterima daripada Istana Surakarta Hadiningrat, Indonesia adalah diragui kesahihannya dan sekalipun ia adalah sahih, ia tidak diiktiraf oleh Kerajaan Malaysia dan justeru itu tidak

boleh dipakai untuk apa-apa tujuan melainkan dengan kebenaran Kerajaan Malaysia dan tidak ada kebenaran sedemikian pernah diberikan.

Oleh yang demikian, Tuan diminta memberi penjelasan bertulis tentang perkara-perkara di atas dalam tempoh TUJUH (7) hari dari tarikh penerimaan surat ini. Sekiranya Tuan gagal berbuat demikian, ANGKASA beranggapan Tuan tidak mempunyai sebarang penjelasan untuk dikemukakan dan tindakan selanjutnya akan diambil ke atas Tuan.

[3] The plaintiff replied *vide* letter dated 1 March 2010 denying the allegations (exh. MKM2). By letter dated 24 Jun 2010 issued by the defendant's executive secretary, the defendant leveled five charges against the plaintiff and requested the plaintiff to attend an internal departmental inquiry (penyiasatan dalam jabatan) (exh. MKM3). The letter reads as follows:

Notis Penyiasatan Dalam Jabatan Dan Surat Dakwaan

Perkara di atas adalah dirujuk.

2. Dimaklumkan, Tuan diminta hadir untuk satu Penyiasatan Dalam Jabatan bagi membicarakan kes Tuan pada hari Jumaat, 9 Julai 2010, mulai jam 3.30 petang di Bilik Mesyuarat 'B', ANGKASA, Wisma Ungku A. Aziz, Jalan SS6/1 Kelana Jaya, Petaling Jaya, Selangor bagi menghadapi pertuduhan berikut:

Bahawa Tuan, semasa memegang jawatan sebagai Naib Yang Dipertua ANGKASA, didakwa telah:

i. Menyogok Ahli Jawatankuasa Perhubungan ANGKASA Negeri tertentu dengan membawa dan membiayai lawatan mereka ke Acheh, Indonesia pada 13 Mac 2009 hingga 16 Mac 2009 dan 25 September 2009 hingga 27 September 2009 dengan niat mempengaruhi mereka supaya mengundi Tuan sebagai YDP pada PKTA Ke-26.

ii. Mengarahkan ejen-ejen atau wakil-wakil Tuan mengumpulkan kad undi dari perwakilan pada PKTA Ke-26, 19 Disember 2009, dengan tujuan untuk memastikan undi PKTA memihak kepada Tuan.

iii. Melalui ejen-ejen atau wakil-wakil Tuan mengambil dan membayar bagi pihak ANGKASA kupon-kupon wang saku wakil tersebut dengan harga lebih tinggi dari sepatutnya iaitu RM160.00 sebagai balasan kepada perwakilan kerana menyerahkan kad undi mereka.

iv. Menyebabkan penerbitan gambar kulit dan isi kandungan di dalam Majalah I Bil. 86 edisi Disember 2009. Gambar kulit asal telah ditukar dengan gambar Tuan, manakala artikel asal dari muka surat 19 hingga 26 ditukar dengan artikel Tuan. Majalah tersebut telah diedarkan oleh Tuan dan/atau melalui ejen-ejen atau wakil-wakil Tuan semasa PKTA Ke-26, 19 Disember 2009 di PWTC, Kuala Lumpur dengan tujuan menonjolkan diri Tuan. Butir-butir yang Tuan huraikan dalam rencana yang kononnya disiarkan oleh Majalah tersebut juga tidak benar dan betul kerana perkara-perkara tersebut telahpun diputuskan oleh Jawatankuasa ANGKASA.

v. Menggunakan dan memakai Darjah Kebesaran "Dato" semasa berkempen pada PKTA Ke-26 dengan tujuan meraih sokongan perwakilan kepada Tuan, yang memberi gambaran seolah-olah Darjah Kebesaran tersebut telah dianugerahkan secara sah oleh Raja-Raja Melayu dan/atau Yang Dipertuan Besar dan/atau Yang Dipertua Negeri di negeri-negeri di Malaysia atau dianugerahkan oleh Yang Di Pertuan Agung, sedangkan Tuan tidak pernah dianugerahkan Darjah Kebesaran sedemikian. Hakikatnya anugerah yang kononnya diterima daripada Istana Surakarta Hadiningrat, Indonesia adalah diragui kesahihannya dan sekalipun ia adalah sahih, ia tidak diiktiraf oleh Kerajaan Malaysia dan justeru itu tidak boleh dipakai untuk apa-apa tujuan melainkan dengan kebenaran Kerajaan Malaysia dan tidak ada kebenaran sedemikian pernah diberikan.

3. Sekiranya Tuan gagal menghadirkan diri, Tuan dianggap tidak mahu membela diri dan Penyiasatan Dalam Jabatan akan diteruskan tanpa kehadiran Tuan (*ex parte*) dan seterusnya membuat keputusan berdasarkan fakta-fakta yang diperolehi.

4. Tuan boleh membawa saksi-saksi dan bukti Tuan untuk tindakan pembelaan terhadap pertuduhan-pertuduhan tersebut. Sila maklumkan kami saksi-saksi yang akan dibawa (jika ada) sebelum 5 Julai 2010.

[4] By a letter dated 8 July 2010 the plaintiff amongst others raised preliminary objections and disputes the validity of the charges and the power of the inquiry committee to investigate the charges (exh. MKM7). By way of his solicitor's letter dated 14 July 2010 to the defendant (exh. MKM4), the plaintiff contends that the letter to show cause (exh. MKM1) and the notice of the internal departmental inquiry are invalid on the following grounds:

(a) there is no provision under the defendant's by-laws providing for such inquiry (exh. MKM4);

(b) there are no rules of ethics or disciplinary rules in the defendant and therefore the allegations of breach of ethics and discipline are baseless;

(c) the inquiry committee is not valid;

(d) the defendant's act is *mala fide*.

[5] The plaintiff did not attend the inquiry. By letter dated 26 August 2010 the defendant notified the plaintiff that the defendant's Jawatankuasa Tadbir Kebangsaan, having received and considered the report from the inquiry committee, had decided as follows (exh. MKM8):

> Bahawasanya Tertuduh, Haji Mustapa Kamal Maulut didapati bersalah kerana telah melakukan perbuatan yang memudaratkan ANGKASA dan Gerakan Koperasi. Sebagai hukuman, Tertuduh dengan ini dilucutkan hak untuk menyertai mana-mana Persidangan Kebangsaan, Persidangan Negeri atau Mesyuarat ANGKASA selama tempoh lima tahun.
>
> Keputusan ini berkuatkuasa tarikh ianya dibuat, yakni 5hb Ogos 2010.

[6] By way of this application the plaintiff applies for a declaration that the punishment dated 26 August 2010 is invalid, costs, and damages to be assessed by this court. The grounds relied on by the plaintiff are as follows:

(a) that the defendant has no jurisdiction whatsoever over the plaintiff as the plaintiff was never a member of the defendant;

(b) in any event there is no provision in the defendant's by-laws for the imposition of a punishment of disbarring the plaintiff from attending any annual meeting at the national level or state level or any meeting of the defendant. The punishment imposed is therefore invalid for lack of jurisdiction.

Preliminary Issue

[7] The defendant raised a preliminary issue objecting to the Plaintiff's application premised on s. 82(1) of the Act which provides as follows:

A 82. Settlement of disputes.

(1) If a dispute touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a Co-operative society arises:

B (a) among members, past members and persons claiming through members, past members and deceased members;

(b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its Board, or any officer of the C Co-operative society;

(c) between the Co-operative society or its Board and any officer of the Co-operative society; or

(d) between the Co-operative society and any other Co-operative society,

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such dispute shall be referred to the Commission for decision.

[8] In gist the defendant contends as follows:

E (a) the plaintiff is a member and Chairman of UKHWAH;

(b) UKHWAH is a member of the defendant;

(c) the plaintiff although an individual is a "member" as defined under s. 2 of the Act which provides as follows: F

"member" includes a person or a co-operative society joining in the application for the registration of a co-operative society and who has signed the minutes of the inaugural general meeting of the cooperative society and a G person or co-operative society admitted to membership of the co-operative society in accordance with the regulations and its by-laws after registration;

(d) the plaintiff, UKHWAH and the defendant are subject to the Act and to the defendant's by-laws;

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(e) section 17 of the Act provides as follows:

17. By-laws to bind members.

(1) The by-laws of a Co-operative society shall, when registered, bind the Co-operative society and its members I to the same extent as if they were signed by each member and contained covenants on the part of each member for himself and for his successor to observe all the provisions of the by-laws;

(f) the plaintiff is a member of the defendant under s. 4 of the defendant's by-laws which provides as follows:

> "Anggota" bererti orang perseorangan yang menganggotai mana-mana koperasi atau kesatuan koperasi yang menjadi ahli ANGKASA.

(g) section 62 of the defendant's by-laws also provides that any dispute regarding the administration of the defendant shall be referred to the Registrar to be resolved in accordance with the Act;

(h) section 82 of the Act makes it mandatory for the plaintiff to refer his dispute with the defendant to the Malaysia Co-operative Societies Commission ("Commission").

For the reasons stated above it is the defendant's contention that the plaintiff's dispute with the defendant ought to be referred to the Commission pursuant to s. 82 of the Act. It is submitted that the plaintiff's application is not in accordance with law and premature. Therefore the application ought to be dismissed.

[9] Counsel for the plaintiff submits that the plaintiff was neither a member of the defendant nor an officer of the defendant. Since 19 December 2009 the plaintiff has ceased to be an officer of the defendant. It is submitted that s. 82 refers to disputes between a member or past member of the cooperative society or dispute between a member or past member and the cooperative society and between any officer of the co-operative society and the co-operative society. Section 82 does not require disputes between 'past officers' of the co-operative to be referred to the Commission.

[10] It is further submitted that s. 4 of the defendant's by-laws provides that:

> "Ahli" bererti sebarang Koperasi, Persekutuan atau Gabungan Koperasi sama ada koperasi asas, menengah atau atasan yang menganggotai ANGKASA

Therefore the plaintiff as an individual could never be a member of ANGKASA and was in fact never a member of ANGKASA. It is submitted that the defendant has failed to produce a register or list of members which under s. 15 of the Act is *prima facie* proof of membership. Section 15 provides as follows:

15. Register of members.

Any register or list of members kept by any Co-operative society shall be *prima facie* evidence of the name, address, identity card number, membership number and occupation of a member and of the dates he became and ceased to be a member.

It is submitted that since the plaintiff is not a member of the defendant, therefore the defendant has no jurisdiction to take action against the plaintiff and the plaintiff is not subject to s. 82 of the Act.

[11] Counsel submits that the defendant's own by-laws distinguishes between "ahli" and "anggota". An "ahli" or member of the defendant can only be a co-operative society and not an individual. An "anggota" is a member of a co-operative society which itself is a member of the defendant. If the plaintiff is regarded as a member then it will mean that any individual can be a member of a secondary co-operative society. It will render the three categories of co-operative societies as categorized in s. 4 of the Act meaningless when the Act distinguishes between co-operative societies with only individuals as members and co-operative societies like the defendant with only other co-operatives as members.

[12] In reply counsel for the defendant submits that by virtue of s. 4 of the defendant's by-laws and the plaintiff's position as Chairman of UKHWAH, the plaintiff is an "anggota" of the defendant. If the plaintiff contends that he is not a member of the defendant, then it is submitted that the plaintiff has no *locus* to contest in the election of the defendant's office bearers.

Decision

[13] The plaintiff contends that he was neither a member nor an officer of the defendant. It is not disputed that the plaintiff who is the Chairman of UKHWAH was also at the material time the Vice President and a member of the defendant's Board of Directors. Section 2 of the Act defines "officer" as follows:

"officer" in relation to a co-operative society, means a chairman, secretary, treasurer or any other member of a Board and includes:

(a) the chief executive officer;

(b) any person empowered by the Board, regulations or orders or by-laws to give directions in regard to the business of the co-operative society; or

(c) any employee;

On the admitted facts I find that it is clear that the plaintiff, being a member of the defendant's board of directors ("Jawatankuasa Tinggi"), was an "officer" of the defendant at the material time. A

[14] The defendant contends that the plaintiff is an "anggota" as defined under s. 4 of the defendant's by-laws and is therefore a member of the defendant. However counsel for the plaintiff submits that the plaintiff is not an "anggota" of the defendant as "anggota" refers to a co-operative society which itself is a member of the defendant. In order to resolve this issue I am of the view that it is necessary to first determine the meaning of the words "ahli" and "anggota" in the context of the defendant's by-laws. B C

[15] The words "ahli" and "anggota" as defined in the Kamus Dewan edisi keempat, are as follows:

> "ahli" means anggota (pertubuhan, persatuan, golongan, dll) D
>
> "anggota" means ahli (sesuatu pasukan, pertubuhan, golongan, dll)

Hence it can be seen that the words "ahli" and "anggota" are synonymous and may be used interchangeably. E

[16] Section 4 of the defendant's by-laws ascribes the following meanings to the words "ahli" and "anggota":

> "Ahli" bererti sebarang Koperasi, Kesatuan, Persekutuan atau Gabungan Koperasi sama ada koperasi asas, menengah atau atasan yang menganggotai ANGKASA; F
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> "Anggota" bererti orang perseorangan yang menganggotai mana-mana koperasi atau kesatuan koperasi yang menjadi ahli ANGKASA.

Thus "ahli" refers only to co-operative societies who are members of the defendant and "anggota" refers only to individuals who are members of co-operatives which are in turn the defendant's "ahli". Members of the defendant's "ahli", by virtue of their membership in the "ahli", are also the defendant's "anggota". The usage of the words "ahli" and "anggota" in the defendant's by-laws serves to distinguish the nature of membership in the defendant's organization but I am of the view that it does not detract from the fact that both a co-operative which is an "ahli" and an individual who is an "anggota" are members of the defendant. Further s. 2 of the Act defines amongst others the following words: G H I

A "member" includes a person or a co-operative society joining in the application for the registration of a co-operative society and who has signed the minutes of the inaugural general meeting of the co-operative society and a person or co-operative society admitted to membership of the co-operative society in accordance with the regulations and its by-laws after registration; (emphasis added)

[17] In respect of the plaintiff, the admitted fact that UKHWAH, of which he is chairman, is a member of the defendant is sufficient to show that the plaintiff is an "anggota" of the defendant. Further I find that not only is the plaintiff an "anggota" of the defendant, he is also an "officer" of the defendant by virtue of being on the defendant's Board of Directors. Therefore I agree with counsel for the defendant that the plaintiff, as "anggota"/ member of the defendant, is therefore subject not only to the provisions of the Act but also to the defendant's by-laws. The defendant therefore has jurisdiction to act against the plaintiff for any alleged misconduct.

[18] Section 82(1) of the Act provides as follows:

82. Settlement of disputes.

(1) If a dispute touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a Co-operative society arises:

(a) among members, past members and persons claiming through members, past members and deceased members;

(b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its Board, or any officer of the Co-operative society;

(c) between the Co-operative society or its Board and any officer of the Co-operative society; or

(d) between the Co-operative society and any other Co-operative society,

such dispute shall be referred to the Commission for decision.

[19] The dispute between the plaintiff and the defendant involves allegations of misconduct against the plaintiff in the contest for the post of President of the defendant in the defendant's 26th Annual National Conference. I am of the view that the dispute between

the plaintiff and the defendant comes within the ambit of s. 82. I agree with the defendant that pursuant to s. 82 the dispute between the plaintiff and the defendant has to be referred to the Commission for a decision.

[20] It is clear that the legislature deems it fit that disputes in the nature specified in s. 82 between the categories of persons or co-operatives specified therein must be referred to the Commission for decision. In the case of *Manggai v. Government of Sarawak & Anor* [1970] 1 LNS 80 the Federal Court said as follows:

> In *Pasmore v. The Oswaldtwistle Urban District Council* [1898] AC 387, 394 Earl of Halsbury LC said:
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> > ... The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.
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> In the more recent case of *Wilkinson v. Barking Corp* [1948] 1 KB 721, 724 Asquith LJ said:
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> > ... It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

Conclusion

[21] Declaratory remedy is discretionary in nature and a declaratory order may be refused if it appears that it is premature to grant a declaration. On the preliminary issue raised by the defendant, I agree with counsel for the defendant that the plaintiff is a member of the defendant and is bound by the Act and the defendant's by-laws. The dispute between the plaintiff and the defendant falls within the ambit of s. 82(1) of the Act and ought to be referred to the Commission for decision. It is premature for the plaintiff to bring his dispute to the court for resolution without first complying with the requirements of s. 82. For the aforementioned reasons the application is dismissed with costs of RM3,000 to the defendant.